

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

2007 JAN -5 PM 3:13

LESLIE BROOKE HARGRAVES

Plaintiff

V.

CITY OF AUSTIN

Defendant

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CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS

CASE NO.

A07CA 014LY

NOTICE OF REMOVAL

TO THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION:

COMES NOW Defendant City of Austin and files this its Notice of Removal, pursuant to 28 U.S.C. §1331, §1343, and §1441. Defendant respectfully shows the Court as follows:

1. Plaintiff's Original Petition was filed December 8, 2006, in the 201st District Court of Travis County, Texas entitled *Leslie Brooke Hargraves v. City of Austin*, D-1-GN-06-004555.
2. Plaintiff has made a claim that is governed by federal law and arises out of the alleged violation of a federal statute by Defendant. This case, therefore, poses federal questions subject to removal under 28 U.S.C. §1331, §1343, and §1441.
3. On December 8, 2006, Defendant received service of the petition stating these claims under federal law. This notice of removal is filed within thirty (30) days of service of the first defendant and is, therefore, timely under 28 U.S.C. §1446(b).
4. This action is being removed to the District Court of the United States for the district and division embracing the place where the state court action is pending.
5. No other defendants have been named in this lawsuit.
6. Defendant has attached to and filed with this Notice of Removal copies of all process, pleadings, and other documents on file in the records of the state court for this case, along with a copy of the docket sheet.


7. Simultaneous with the filing of this Notice of Removal, Defendants will file a copy of the notice with the Clerk of the 201st Judicial District Court of Travis County, Texas, under Cause No. D-1-GN-004555.

8. As evidenced by the certificate below, Defendant has served all parties with copies of this notice.

WHEREFORE PREMISES CONSIDERED, Defendants respectfully request that this case be removed from the 201st Judicial District Court of Travis County, Texas to the United States District Court for the Western District of Texas, Austin Division; and that the United States District Court issue such notices and orders necessary to bring before it all proper parties, and such other orders and notices as may be authorized by law.

RESPECTFULLY SUBMITTED,

DAVID ALLAN SMITH
CITY ATTORNEY


CHRIS EDWARDS
Assistant City Attorney
State Bar No. 00789276
Post Office Box 1546
Austin, Texas 78767-1546
(512) 974-2419
(512) 974-6490 [FAX]

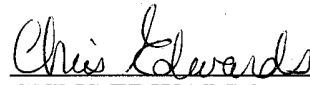
ATTORNEYS FOR DEFENDANT
CITY OF AUSTIN

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties, or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, this 5th of January, 2007.

Via Certified Mail, RRR #7111 0293 8591 0001 1102 to:

Russell Scott Cook
1411 West Avenue, Suite 100
Austin, TX 78701



CHRIS EDWARDS

Defendant.

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IN THE DISTRICT COURT
201 JUDICIAL DISTRICT
OF TRAVIS COUNTY, TEXAS

06 DEC -8 PM 12:10

Amos T. Bell
 DISTRICT CLERK
 TRAVIS COUNTY, TEXAS

1. Plaintiff intends to conduct discovery under Level 2 of the Texas Rules of Civil Procedure.
2. Plaintiff, Leslie Brooke Hargraves, is an individual residing in Lakeway, Travis County, Texas.
3. Defendant, City of Austin is an incorporated city in Texas located in Travis County, Texas. This Defendant may be served by serving the City Manager, Toby Hammett Futrell, at 301 W. 2nd, 3rd Floor, Austin, TX 78701.
4. This Court has subject matter jurisdiction because Plaintiff's damages are in excess of the minimal jurisdictional limits of the Court.

5. Venue is proper in Travis County, Texas because all or a substantial part of the events or omissions giving rise to Plaintiff's claim occurred in Travis County. TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1).

II. **FACTUAL BACKGROUND**

6. Ms. Hargraves was hired as a truck driver by the City of Austin, Street and Bridge Department, in or about March 2005. In or about May 2005, Ms. Hargraves was sexually harassed by her co-workers, including by her direct supervisor. In or about May 2005, Ms. Hargraves opposed this unlawful practice by complaining to her direct supervisor and to the Human Resources division for her department. Shortly thereafter, Ms. Hargraves was transferred to another job assignment to work for another supervisor. After a very brief stint in this new position, Ms. Hargraves was placed on administrative leave. On or about June 1, 2005, Ms. Hargraves was terminated from her employment by the City of Austin on the basis of sex and in retaliation for opposing a discriminatory employment practice and for making a complaint of such practice, in violation of TEX. LAB. CODE §§ 21.051; 21.055, and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e-2(a)(1); 2000e-3(a).

III. **CAUSES OF ACTION**

7. Plaintiff adopts and incorporates herein by reference all preceding paragraphs.

8. Plaintiff brings this action on the basis that she was discharged or otherwise discriminated and retaliated against for opposing a discriminatory employment practice and for filing a complaint of such practice, pursuant to TEX. LAB. CODE § 21.055.

9. Plaintiff brings this action on the basis that she was discharged or otherwise discriminated against on the basis of sex, pursuant to TEX. LAB. CODE § 21.051.

10. Plaintiff brings this action on the basis that she was discharged or otherwise discriminated and retaliated against for opposing a discriminatory employment practice and for filing a complaint of such practice, pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-3(a).

11. Plaintiff brings this action on the basis that she was discharged or otherwise discriminated against on the basis of sex, pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-2(a)(1).

12. The Texas Legislature has waived immunity to this cause of action against the Defendant.

IV. **CONDITIONS PRECEDENT**

13. All conditions precedent to Plaintiff's claim for relief have been performed or have occurred. Plaintiff has exhausted all administrative remedies by filing a complaint with the Texas Workforce Commission, receiving a right to sue letter from the Texas Workforce Commission, and filing suit within 60 days of receipt of that letter. Plaintiff has exhausted all administrative remedies by filing a complaint with the Equal Employment Opportunity Commission, receiving a right to sue letter from the EEOC, and filing suit within 90 days of receipt of that letter.

V. **REQUEST FOR DISCLOSURE**

14. Pursuant to Texas Rule of Civil Procedure 194, Plaintiff requests that Defendant disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

VI.
DEMAND FOR JURY TRIAL

15. Plaintiff demands a jury trial and tenders the appropriate fee with this petition.

VII.
DAMAGES

16. As a result of the above mentioned facts, Plaintiff has suffered damages in an amount in excess of the minimum jurisdictional limits of the Court.

17. Plaintiff demands judgment in her favor and requests the following relief against the Defendant:

- a. All actual damages, including but not limited to past and future lost wages, past and future lost benefits, including front pay and back pay;
- b. Compensatory damages;
- d. Reinstatement;
- e. Punitive damages;
- f. Pre-judgment and post-judgment interest as allowed by law;
- g. Attorneys' fees and expert fees;
- h. Court costs and expenses;
- i. Equitable relief, including front pay and back pay;
- j. Any such further relief as the Court deems proper and just under the circumstances.

VIII.
PRAYER

18. WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant be cited to appear and answer herein, and that upon trial by a jury or this Court Plaintiff be granted judgment against Defendant as requested herein, and for such other and further relief, both general and special, at law and in equity, to which Plaintiff may be shown justly entitled.

Respectfully submitted,

LAW OFFICE OF R. SCOTT COOK



Russell Scott Cook
Texas Bar No. 24040724
1411 West Ave., Suite 100
Austin, TX 78701
Phone: (512) 482-9556
Fax: (512) 597-3172

COUNSEL FOR PLAINTIFF

NO. D-1-GN-06-004555

LESLIE BROOKE HARGRAVES
Plaintiff

V.

CITY OF AUSTIN
Defendant

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

201ST JUDICIAL DISTRICT

JAN 02 2007
12:45P

DEFENDANT CITY OF AUSTIN'S ORIGINAL ANSWER

TO THE HONORABLE JUDGE OF THE DISTRICT COURT:

COMES NOW the City of Austin and files Defendant City of Austin's Original Answer in response to Plaintiff's Original Petition, pursuant to Rule 85 of the Texas Rules of Civil Procedure and in support thereof, respectfully shows as follows:

I.
General Denial

Subject to such matters as may be admitted during discovery and upon trial of this cause, and in reliance upon its rights as provided by Rule 92 of the Texas Rules of Civil Procedure, Defendant denies generally the allegations of Plaintiff's pleading and requests that Plaintiff prove(s) its claims and allegations as required by law.

II.
Affirmative Defenses

Defendant asserts the affirmative defense of governmental immunity in that it is a municipal corporation. To the extent that it was acting in the performance of its governmental functions during the occurrence made the basis of this lawsuit, Defendant asserts its entitlement to sovereign immunity from Plaintiff's claims.

Defendant asserts the affirmative defense of governmental immunity for actions of employees acting within the course and scope of their employment as government employees, and thereby entitled to official immunity from Plaintiff's claims.

Defendant asserts the affirmative defense of statute of limitations as to any claims falling outside the applicable limitations period.

Defendant asserts the affirmative defense of failure to exhaust administrative remedies as to any claims falling outside the practices for which Plaintiff filed a claim of discrimination.

Defendant asserts the affirmative defense of lack of jurisdiction to the extent that any of Plaintiffs' claims are not within the jurisdiction of this court.

Defendant asserts the affirmative defense that Plaintiff has failed to mitigate her damages, if any.


III.

Prayer

WHEREFORE, Defendant City of Austin prays that all relief requested by Plaintiff be denied, and that Defendant recover its costs and reasonable attorney's fees and any additional relief to which it is entitled under law or in equity.

RESPECTFULLY SUBMITTED,

DAVID ALLAN SMITH
CITY ATTORNEY



CHRIS EDWARDS
Assistant City Attorney
State Bar No. 00789276
City of Austin-Law Department
Post Office Box 1546
Austin, Texas 78767-1546
(512) 974-2419
(512) 974-6490 [FAX]

ATTORNEYS FOR DEFENDANT
CITY OF AUSTIN

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties, or their attorneys of record, in compliance with the Texas Rules of Civil Procedure, this ____ day of January, 2007.

Via Certified Mail, RRR #7111 0293 8590 0000 1096 to:
Russell Scott Cook
1411 West Avenue, Suite 100
Austin, TX 78701



CHRIS EDWARDS

Case:d-1-gn-06-004555 with (4) documents

Filed Date	Category	Description	Additional Info
12/8/2006	PET-PL ...	Judges Notes/Comments ORIGINAL PETITION/APPLICATION	PLAINTIFF'S ORIGINAL PETITION, REQUEST FOR DISCLOSURE AND DEMAND FOR JURY TRIAL ...
12/20/2006	SRVPRO...	EXE SERVICE OF CITATION	CITY OF AUSTIN
1/2/2007	ANS-RES...	ORIGINAL ANSWER	DEFENDANT CITY OF AUSTIN'S ORIGINAL ANSWER

A-07-cv-04

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

A07CA 014LY

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Leslie Brooke Hargraves

(b) County of Residence of First Listed Plaintiff Travis
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Russell Scott Cook
1411 West Avenue, Suite 100
Austin, TX 78701

DEFENDANTS

City of Austin

County of Residence of First Listed Defendant Travis
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

Chris Edwards, Assistant City Attorney
P.O. Box 1546
Austin, TX 78767

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
☒ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):
 42 U.S.C. 2000e-3(a)(1), 42 U.S.C. 2000e-3(a), Title VII of the Civil Rights Act of 1964

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

1-5-07

Chris Edwards

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

upatel

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Supplement to JS 44 Civil Cover Sheet
Cases Removed from State District Court

This form must be filed with the Clerk's Office no later than the **first business day** following the filing of the Notice of Removal. Additional sheets may be used as necessary.

The attorney of record for the removing party **MUST** sign this form.

STATE COURT INFORMATION:

1. Please identify the court from which the case is being removed; the case number; and the complete style of the case.

District Court, 201st Judicial District, Travis County, Texas
Leslie Brooke Hargraves v. City of Austin
D-1-GN-06-004555

2. Was jury demand made in State Court? Yes ☒ No ☐

If yes, by which party and on what date?

Leslie Brooke Hargraves, Plaintiff

December 8, 2006

Party Name

Date

STATE COURT INFORMATION:

1. List all plaintiffs, defendants, and intervenors still remaining in the case. Also, please list the attorney(s) of record for each party named and include the attorney's firm name, correct mailing address, telephone number, and fax number (including area codes).

Leslie Brooke Hargraves, Plaintiff
Russell Scott Cook, Attorney of Record
1411 West Avenue, Suite 100
Austin, Texas 78701
(512) 482-9556
(512) 594-3175 Fax

City of Austin, Defendant
Chris Edwards, Assistant City Attorney
P.O. Box 1546
Austin, Texas 78767
(512) 974-2419
(512) 974-2894 Fax

2. List all parties that have not been served at the time of the removal, and the reason(s) for non-service.

3. List all parties that have been non-suited, dismissed, or terminated, and the reason(s) for their removal from the case.

COUNTERCLAIMS, CROSS-CLAIMS, and/or THIRD-PARTY CLAIMS:

1. List separately each counterclaim, cross-claim, or third-party claim still remaining in the case and designate the nature of each such claim. For each counterclaim, cross-claim, or third-party claim, include all plaintiffs, defendants, and intervenors still remaining in the case. Also, please list the attorney(s) of record for each party named and include the attorney's firm name, correct mailing address, telephone number, and fax number (including area codes).

VERIFICATION:

Chris Edwards
Attorney for Removing Party

Chris Edwards

1-5-07
Date

City of Austin

Party/Parties

AO82
(Rev. 4/90)

ORIGINAL

404493

RECEIPT FOR PAYMENT
UNITED STATES DISTRICT COURT
 for the
WESTERN DISTRICT OF TEXAS
 at Austin

RECEIVED FROM

City of Austin
P.O. Box 1546
Austin Tx 78767

Fund	
6855XX	Deposit Funds
604700	Registry Funds
	General and Special Funds
508800	Immigration Fees
085000	Attorney Admission Fees
086900	Filing Fees
322340	Sale of Publications
322350	Copy Fees
322360	Miscellaneous Fees
143500	Interest
322380	Recoveries of Court Costs
322386	Restitution to U.S. Government
121000	Conscience Fund
129900	Gifts
504100	Crime Victims Fund
613300	Unclaimed Monies
510000	Civil Filing Fee (1/2)
510100	Registry Fee

ACCOUNT	AMOUNT
086900	60.00
510000	190.00
086400	100.00
TOTAL	350.00
Case Number or Other Reference	
1:07-cv-014	

New Case

Hargraves v.
 City of Austin

\$ Checks and drafts are accepted subject to collection and full credit will only be given when the check or draft has been accepted by the financial institution on which it was drawn.

DATE	Cash	Check	M.O.	Credit
1-5-07		X		

DEPUTY CLERK

[Signature]